



GENERAL SERVICES ADMINISTRATION

48 CFR Part 532

[GSAR Case 2020-G521; Docket No. 2021-0008; Sequence No. 1]

RIN: 3090-AK35

General Services Administration Acquisition Regulation;

Remove Office of General Counsel Review for Final Payments

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to revise internal agency approval procedures for processing a final payment for construction and building service contracts where, after 60 days, a contracting officer is unable to obtain a release of claims from a contractor.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before **[Insert date 60 days after date of publication in the *FEDERAL REGISTER*]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to GSAR Case 2020-G521 to: Regulations.gov: <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "GSAR Case 2020-G521". Select the link "Comment Now" that corresponds with GSAR Case 2020-G521.

Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "GSAR Case 2020-G521" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

Instructions: Please submit comments only and cite GSAR Case 2020-G521 in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov> approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Logan Kemp, GSA Acquisition Policy Division, at 202-969-4066 or by email at gsarpolicy@gsa.gov, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite GSAR Case 2020-G521.

SUPPLEMENTARY INFORMATION:

I. Background

GSA is proposing to amend the General Services Administration Regulations (GSAR) to modify GSAR 532.905-70 so it no longer requires contracting officers to obtain

approval of legal counsel before processing final payments for construction and building service contracts where, after 60 days, the contracting officer is unable to obtain a release of claims from the contractors. Legal review is not a statutory requirement, and the decision to process final payments in such cases is a business decision, rather than a legal one.

II. Authority for This Rulemaking

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

III. Discussion and Analysis

Prior to this rule, GSA guidance on final payments for construction and building service contracts provided that, "in cases where, after 60 days from the initial attempt, the contracting officer is unable to obtain a release of claims from the contractor, the final payment may be processed with the approval of assigned legal counsel." GSA is proposing to amend GSAR 532.905-70(c) by removing the legal approval requirement because this is a business decision to be made by the contracting officer, not a legal decision. Therefore, if there is implementation of this proposed rule, a contracting officer may instead process a final payment in such a situation after documenting in the contract file: (i) that the contracting officer requested a

release of claims from the contractor and did not receive a response within 60 calendar days; and (ii) approval to process the final payment from one level above the contracting officer.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been reviewed and determined by Office of Management and Budget (OMB) not to be a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a "major rule" may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule

cannot take effect until 60 days after it is published in the Federal Register. This rule has been reviewed and determined by OMB not to be a "major rule" under 5 U.S.C. 804(2).

VI. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (GSAR Case 2020-G521), in correspondence.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 35, et seq.).

List of Subjects in 48 CFR Part 532

Government procurement.

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Therefore, GSA proposes to amend 48 CFR part 532 as set forth below:

PART 532—CONTRACT FINANCING

1. The authority citation for 48 CFR part 532 continues to read as follows:

Authority: 40 U.S.C. 121(c).

2. Amend section 532.905-70 by—

a. Removing from paragraph (a) “amount due the Contractor” and adding “amount due to the contractor” in its place;

b. Revising paragraph (b); and

c. Removing paragraphs (c) and (d).

The revision reads as follows:

532.905-70 Final payment—construction and building service contracts.

* * * * *

(b) A contracting officer may only process the final payment for a construction or building service contract once:

(1) The contractor submits a properly executed GSA Form 1142, Release of Claims; or

(2) The contracting officer documents in the contract file:

(i) That the contracting officer requested a release of claims from the contractor and did not receive a response within 60 calendar days; and

(ii) Approval to process the final payment from one level above the contracting officer.

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